

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT  
ADDICTION / PERSONAL INJURY  
PRODUCTS LIABILITY LITIGATION

Case No.: 4:22-md-03047-YGR

MDL No. 3047

This Document Relates To:  
  
All Actions

**JOINT STATEMENT RE:  
COORDINATION ORDER DISPUTES**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Thomas S. Hixson

In accordance with CMO 5, EFC No. 164, at 3 (and the extensions subsequently granted by the Court), the Parties respectfully seek the Court's assistance to resolve their dispute concerning entry of a coordination order. Both Parties' positions are laid out below and competing proposed orders are submitted herewith.

**I. Plaintiffs' Position**

Over the past four months, Plaintiffs in the MDL and JCCP have worked collaboratively together, and with Defendants, to address a host of issues common to both proceedings, including a preservation order, a protective order, and a Plaintiffs' Fact Sheet. Coordination here is well underway. In recognition of such, Plaintiffs propose a short and straightforward coordination order that will facilitate coordinated and streamlined discovery.

Crucially, Plaintiffs' proposal aligns with recent guidance from the JCCP Court on coordination. On May 3, 2023, Judge Kuhl issued a Minute Order outlining the principles of cooperation expected from counsel during discovery: "[1] Discovery in the MDL proceeding and in this JCCP proceeding should be coordinated; [2] Discovery requests served and responded to in the MDL will be treated as though served and responded to in the JCCP; and [3] the JCCP court will not allow discovery in this case that duplicates what has taken place in the MDL." Ex. A, *In re: Social Media Cases*, JCCP No. 5255 (Cal. Sup. Ct.), 5/3/2023 Minute Order ("Minute Order"), at 2. Plaintiffs' proposed order reiterates this common-sense guidance. Given the ongoing, effective

1 coordination between the two proceedings in which the lion's share of cases have been brought,  
 2 nothing more is needed at this time. Defendants' elaborate proposed order is a solution in search of  
 3 a problem.

4 Defendants' proposed order also fails for the simple reason that it lacks the support of the  
 5 Court and Plaintiffs in the JCCP. Effective coordination requires "the approval and cooperation of  
 6 the judges" in related cases, including "complementary order(s) sufficient to accomplish that  
 7 coordination." *In re Flint Water Cases*, Coordination Order, No. 5:16-cv-10444-JEL-EAS (E.D.  
 8 Mich. Nov. 16, 2018) (ECF No. 675), at 2-3. While Defendants attempt to cast their proposals as  
 9 consistent with Judge Kuhl's guidance, the attached transcripts reveal otherwise. Judge Kuhl was  
 10 presented with Defendants' positions here, and she did not adopt them.<sup>1</sup> Instead, she counseled  
 11 against "elaborate orders" like Defendants' proposal, that prescribe where and how to address  
 12 future disputes that may never arise. Ex. C, May 3, 2023 JCCP Hr'g Tr. at 4:3-6. She instructed the  
 13 Parties to "solve issues as they arise" because "better decisions can be made in concrete situations."  
 14 *Id.* at 4:7-9. Finally, "having read [the Parties'] thorough discussion of [their] respective positions,"  
 15 the JCCP Court issued the Minute Order as its "proposal for addressing the issue," finding that "for  
 16 the present that would be sufficient for this case." *Id.* at 3:9-4:18.<sup>2</sup>

17 The JCCP Court's rejection of Defendants' proposal is no surprise given Defendants'  
 18 attempt to restrict the JCCP Court's jurisdiction. For example, Defendants insist that JCCP  
 19 Plaintiffs present discovery disputes to the MDL Court in the first instance.<sup>3</sup> That intrudes on the  
 20 JCCP Court's authority to hear discovery disputes in its own proceedings and is arguably beyond  
 21 the authority of the MDL Court to order. And it ignores the JCCP Court's direction that it intends  
 22 to "closely supervise discovery" in the JCCP. Ex. D, Feb. 17, 2023 JCCP Hr'g Tr. at 39:5-6.

23  
 24 <sup>1</sup> See Ex. B, JCCP Joint Status Conference Statement for May 3, 2023 Conference ("CMCS") at 9-  
 11 (Defendants' position on their proposed coordination order).

25 <sup>2</sup> Defendants' "forum shopping" claim also misrepresents the record. Judge Kuhl first commented  
 26 on expert disclosure under California law *before* Magistrate Judge Hixon issued his ruling, *see* Def.  
 Ex. 6, Mar. 22, 2023 Hr'g Tr. at 12:6-13:3, and again at her next hearing.

27 <sup>3</sup> Under Defendants' proposal, JCCP Plaintiffs would be permitted to raise discovery disputes  
 28 directly with the JCCP Court only by demonstrating "good cause" (§ 29) or where the applicable  
 law "differs materially" from the federal rules (§ 28), a vague and unenforceable standard.

Without support from the JCCP Court, Defendants try again with this Court to justify the scope of their order by raising the specter of duplicative discovery. But this belies the fact that the JCCP Court’s Minute Order expressly prohibits JCCP Plaintiffs from propounding duplicative discovery—which of course includes depositions—while integrating discovery from the MDL to the JCCP. Minute Order at 2.<sup>4</sup> Likewise, Defendants’ attempt to restrict *non*-duplicative discovery in the JCCP is misguided. Defendants’ proposed order would compel JCCP Plaintiffs to obtain leave to serve non-duplicative discovery in the JCCP by demonstrating “good cause” as to why such discovery could not have been obtained in the MDL. Such a restriction on discovery in the JCCP is meaningless without support from the JCCP Court, which has authority over its own proceedings. And as noted, the JCCP Court declined to impose such a high burden for JCCP Plaintiffs, *after* considering Defendants’ arguments. *See* CMCS at 10.

None of the coordination orders from other MDLs cited by Defendants support such overreach. They are less restrictive than what Defendants propose here,<sup>5</sup> most if not all were entered in the MDL without opposition, and some, like the *Zimmer M/L Taper* MDL order, were never entered in any related state court cases. The Court should not endorse Defendants’ unsupported attempt to tread on the JCCP Court’s authority in the face of the Parties’ effective cooperation to date. Instead, by adopting Plaintiffs’ proposed order, the Parties can reduce undue burden and facilitate efficient prosecution of both the MDL and JCCP, without intruding on either Court’s authority to govern its proceedings.

<sup>4</sup> Judge Kuhl’s Minute Order is entirely consistent with her prior statements on the scope of coordinated discovery, which Defendants misrepresent as supporting their overbroad proposals. *See* Ex. D at 33:21–26 (noting that JCCP Plaintiffs will be barred from duplicating discovery taken in the MDL); *see also* Def. Ex. 6, Mar. 22, 2023 Hr’g Tr. 34:6–10 (noting that discovery produced in the MDL may be treated as produced in the JCCP).

<sup>5</sup> *See, e.g., In re Acetaminophen – ASD-ADHD Prods. Liab. Litig.*, 1:22-md-03043-DLC, Dkt. 382 at ¶ 9 (S.D.N.Y.) (permitting non-duplicative discovery in non-MDL cases); *id* at ¶ 21 (requiring the parties raise only “MDL-related” discovery disputes in the MDL court); *In Re: Paraquat Products Liability Litigation*, MDL No. 3004, Case No. 3:21-md-03004-NJR, Dkt. 462 at ¶ 9 (S.D. Ill. October 26, 2021) (“the parties need not obtain leave of court to conduct non-duplicative discovery”); *In Re: 3M Combat Arms Earplug Products Liability Litigation*, MDL No. 2885, Case No. 3:19-md-02885-MCR-HTC, Dkt. 1162 at ¶ 11 (N.D. Fla. June 3, 2020) (permitting non-duplicative discovery in non-MDL cases); *In Re: DiCamba Herbicides Litigation*, MDL No. 2820, Case No. 1:18-md-02820-SNLJ, Dkt. 383 at ¶ 16.b. (E.D. Mo. May 6, 2019) (same).

## II. Defendants' Position

Consistent with well-established principles for multi-jurisdiction proceedings, Defendants' proposed Coordination Order: (1) streamlines substantially overlapping discovery and pretrial proceedings such that each party has the benefit of coordinated discovery; (2) prevents unnecessary duplication of pretrial efforts; (3) conserves judicial and party resources; and (4) promotes both coordination and the just and efficient conduct of these cases consistent with the MDL Court's statutory directive pursuant to 28 U.S.C. § 1407. *See, e.g.*, Ex. 1, Manual for Complex Litigation (Fourth) §20.31; Ex. 2, Guidelines and Best Practices for Large and Mass-Tort MDLs, Duke Law School (Second Edition) (the "Guidelines"), Chapter 6 – Federal/State Coordination, p. 81. Moreover, Defendants' proposal is consistent with coordination orders entered in other MDLs, as well as guidance received from Judge Kuhl. *See* Ex. 3, May 3, 2023 JCCP Minute Order at 2.<sup>6</sup>

In contrast, Plaintiffs' proposal lacks any substantive provisions to facilitate coordination. Plaintiffs' proposal would obligate Defendants to make all MDL discovery available to non-MDL plaintiffs, while simultaneously allowing them to pursue even more discovery in those parallel actions. It would even allow non-MDL plaintiffs (including those represented by MDL leadership counsel) to circumvent MDL discovery rulings in different forums—an inefficient, unfairly prejudicial result, and the precise result coordination orders are intended to avoid.

Despite this Court's instructions at the March CMC, Plaintiffs persist in their efforts to forum shop between this Court and the JCCP, seeking second bites at the apple on any ruling they dislike. This happened most recently with the Protective Order: after Magistrate Judge Hixson overruled the MDL Plaintiffs' objection to a provision of the N.D. Cal. model protective order, the JCCP Plaintiffs elicited "tentative" comments from Judge Kuhl, based on which the MDL Plaintiffs are now asking Magistrate Judge Hixson to reconsider his prior ruling, forcing the Parties to re-brief and re-argue the issue. Similarly, after requesting a six-week extension of the deadline to

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<sup>6</sup> Relevant proceedings in other courts where the Coordination Order could be entered include *In re: Social Media Cases*, JCCP No. 5255 (Cal. Sup. Ct.) (the "JCCP"); two federal court cases with pending remand motions: *Nasca v. ByteDance Inc. et al.*, Case No. TC230321-S5 (E.D.N.Y.) and *V.V. et al. v. Meta Platforms, Inc. et al.*, Case No. 3:23-cv-00284 (D. Conn.); and a New Mexico state court case, *Blea v. Snap, Inc. et al.*, Case No. D-412-CV-2022-00236.

1 submit a Coordination Order to make “meaningful” edits to “move [the Parties] even closer,” the  
 2 MDL Plaintiffs waited until after the JCCP Plaintiffs elicited preliminary comments from Judge  
 3 Kuhl that they now take out of context to argue that no meaningful coordination is required.

4 Defendants respectfully request that the Court enter their proposed order because it is:  
 5 (1) appropriate and necessary given the size and posture of this litigation; and (2) driven by  
 6 precedent, promotes efficiency, and represents a balanced approach to cross-jurisdiction discovery.

7 **A coordination order is appropriate and necessary.** Coordination between parallel  
 8 federal and state court actions is a common and successful tool. The JPML instructs MDL judges  
 9 that “[c]oordination with state judges can be very important.” *See* Ex. 4, Ten Steps to Better Case  
 10 Management, Section VII p. 6; *see also* Ex. 2, Guidelines p. 81 (effective coordination promotes  
 11 efficiency, avoids inconsistent rulings, and facilitates the just and inexpensive resolution of cases).  
 12 The “earlier and more comprehensive the cooperative intervention occurs in the litigation cycle,  
 13 the greater the benefits[.]” Ex. 1 at § 20.312; *see also* Ex. 2, Guidelines p. 81.

14 Specific elements of discovery coordination include: (i) scheduling and cross-noticing  
 15 depositions to serve as official depositions in both the MDL and parallel proceedings; (ii) adopting  
 16 standard written discovery requests for those proceedings; and (iii) coordinating rulings on  
 17 discovery disputes. *Id.* Indeed, Judge Kuhl instructed early in the parallel JCCP proceedings that  
 18 discovery across the JCCP and MDL should be coordinated, *see* Ex. 5, Feb. 17, 2023 Hr’g Tr.  
 19 33:21–26; Ex. 6, Mar. 22, 2023 Hr’g Tr. 34:6–10, and recently issued an order both establishing  
 20 minimum coordination requirements and permitting Defendants to move for entry of a standalone  
 21 coordination order following this Court’s consideration, *see* Ex. 7, May 3, 2023 Hr’g Tr. 4:14-5:9.

22 Without a substantive coordinating order, both the Court and the Parties would face  
 23 duplicative work: **The Court’s** discovery rulings could be subject to constant collateral challenge,  
 24 as has already happened in the JCCP. **Witnesses** could be needlessly forced to sit for deposition  
 25 after deposition on the same subject matters. **Defendants** could be made to answer a stream of  
 26 discovery requests in circumvention of numeric limits. And **each state court plaintiff** would need  
 27 to start discovery from scratch, by serving their own discovery requests, meeting and conferring  
 28 regarding objections, and seeking judicial intervention to resolve any disputes.

1 While coordination is underway between Your Honor and the JCCP Court, Defendants’  
 2 proposed Coordination Order is intended to guide litigants and ensure efficient coordination with  
 3 future actions in other courts with lawyers not otherwise involved in the MDL or JCCP. It takes  
 4 only a handful of cases in other jurisdictions for the benefits of coordination to be undermined.

5 **The MDL should be the “lead case” in pretrial proceedings and coordinated discovery.**  
 6 Because of the potential for duplication, administrative burden, and inconsistent discovery rulings,  
 7 among other issues, efficient coordination requires identifying a “lead case” for general discovery  
 8 and allowing general discovery from that lead case to be used in courts across the country. *See,*  
 9 *e.g., Ex. 8, In re: Acetaminophen – ASD-ADHD Prods. Liab. Litig.* (“APAP”), MDL No. 3043,  
 10 Dkt. 382 at 3 (S.D.N.Y.) (“The MDL shall be the lead case for discovery and pretrial  
 11 proceedings.”). Here, it makes sense for the MDL to be that “lead case.” The MDL was established  
 12 first and is proceeding ahead of the JCCP. This Court first ordered the production of documents  
 13 (relating to other investigations), and Defendants have filed their first motion to dismiss in the  
 14 MDL. As Judge Kuhl has observed, “the federal court started first so, . . . if they are going first with  
 15 discovery, I’m happy for it to be just brought into this case.” *See Ex. 6, Mar. 22, 2023 Hr’g Tr.*  
 16 *34:6-10; id. 34:15-18.* By failing to identify such a case, Plaintiffs’ proposal undermines the  
 17 purposes of coordination and promotes, rather than prevents, judge-shopping and re-litigation.

18 **Defendants’ proposed Coordination Order does not restrict the JCCP Plaintiffs’**  
 19 **discovery rights or limit Judge Kuhl’s jurisdiction.** If a Coordination Order is entered here, it  
 20 would initially govern only the MDL. Later, the Order could be presented to any other court before  
 21 which a related action is pending; those courts could then choose to enter the Order (or portions of  
 22 it). In this way, every court preserves its own jurisdiction and control of its own docket.

23 Defendants have made *every* effort to promote collaboration while preserving party- and  
 24 court-autonomy. For example, Defendants’ proposed Coordination Order: provides flexibility in  
 25 scheduling across litigations, stating that Coordinated Actions may precede discovery in the MDL,  
 26 where “the Trial Court in a Coordinated Action finds good cause” for a more expedited schedule,  
 27 ¶ 10; allows plaintiffs in Coordinated Actions to serve non-duplicative Generally Applicable  
 28 Discovery after representing that they have reviewed existing discovery and shown good cause as



1 to why such discovery could not be obtained “through Coordinated Discovery in the MDL,” ¶ 11;  
 2 encourages state-court plaintiffs’ counsel to participate in MDL discovery negotiations, ¶ 16; and  
 3 includes caveats that account for differences regarding the scope of discovery, *e.g.*, ¶ 29.

4 Plaintiffs oppose these provisions. As one example, Plaintiffs object to the commonly-  
 5 adopted provision prohibiting repeat depositions in Coordinated Actions of witnesses deposed in  
 6 the MDL unless “another deposition is necessary to address issues unique to the Coordinated  
 7 Action,” and the noticing party shows “good cause why the discovery could not have been  
 8 obtained” in the MDL. ¶ 19. This is a reasonable, commonsense measure to avoid duplicative  
 9 depositions,<sup>7</sup> consistent with other provisions providing for deposition coordination—*e.g.*,  
 10 requiring parties to exercise “good faith efforts at coordination of time and place of Generally  
 11 Applicable Depositions in the MDL and Coordinated Actions,” (¶ 20), permitting state-court  
 12 plaintiffs to cross-notice and attend any Generally Applicable Discovery deposition (¶ 18), and  
 13 permitting use of any MDL deposition as if it had been taken in the state-court action (¶ 25).

14 **Defendants’ proposed Coordination Order is consistent with those entered in other**  
 15 **recent MDLs.**<sup>8</sup> Indeed, it tracks many of the same concepts as these prior orders and, in particular,  
 16 the recent MDL coordination orders entered in the APAP and *In re: Zimmer* matters, including the  
 17 same or similar provisions for general application of coordinated discovery (Def. Coord. Ord. at ¶¶  
 18 9-14; APAP at ¶¶ 3-5, 9-11); written discovery (Def. Coord. Ord. at ¶¶ 15-16; APAP at ¶¶ 7-8);  
 19 depositions (Def. Coord. Ord. at ¶¶ 17-28; APAP at ¶¶ 12-19); resolution of discovery disputes  
 20 (Def. Coord. Ord. at ¶¶ 29-31; APAP at ¶¶ 21-23); and implementation (Def. Coord. Ord. at ¶¶ 32-  
 21 33; APAP at ¶¶ 25-26). *See also In re: Zimmer* provisions on general application of coordinated  
 22 discovery (Ex. 12 at ¶¶ A.1, A.5-8, E.31, B.9-10); written discovery (*id.* at ¶¶ B.9-10, E.29);

23 <sup>7</sup> Even absent a formal coordination order, courts routinely bar repeat depositions. *See, e.g., Kosek*  
 24 *v. Ethicon, Inc.*, No. 18 C 7477, 2020 WL 6203310, at \*3 (N.D. Ill. Oct. 22, 2020) (granting  
 25 protective order “because there is no indication that re-depositions of the witnesses who were  
 26 previously deposed in the MDL—some of them multiple times—are necessary to elicit any new  
 (and useful) information not covered in the MDL proceeding”).

27 <sup>8</sup> *See, e.g.,* Ex. 8, APAP; Ex. 9, *In re: Paraquat Prods. Liab. Litig.*, MDL No. 3004 (S.D. Ill.); Ex.  
 28 10, *In re: 3M Combat Arms Earplug Prods. Liab. Litig.*, MDL No. 2885 (N.D. Fla.); Ex. 11, *In re:*  
*DiCamba Herbicides Litig.*, MDL No. 2820 (E.D. Mo.); Ex. 12, *In re: Zimmer Prods. Liab. Litig.*,  
 MDL No. 2859, (S.D.N.Y.).

depositions (*id.* at ¶¶ B9-10, D.18-27); resolution of discovery disputes (*id.* at ¶¶ F.34-36); and implementation (*id.* at ¶¶ G.37-38). In contrast, Plaintiffs shared no such precedent for their proposed order.

**Dated:** May 10, 2023

Respectfully submitted,

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**ATTESTATION**

I, Geoffrey M. Drake, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

**DATED:** May 10, 2023

By: s/ Geoffrey M. Drake

Geoffrey M. Drake